IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 34 of 2006
In
COMPANY APPLICATION No. 402 of 2005
With
COMPANY PETITION No. 35 of 2006
In
COMPANY APPLICATION No. 403 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDO-NIPPON SPECIAL CEMENTS LTD. - Petitioner(s)
Versus
... - Respondent(s)

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Appearance :

MR TANVISH U BHATT for Petitioner(s) : 1,
MR KH KAJI for Respondent(s) : 1,
MR MANISH K KAJI for Respondent(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/01/2007

COMMON ORAL JUDGMENT

1. Company Petition No.34 of 2006 is filed by the petitioner – Indo – Nippon Special Cements Limited (hereinafter referred to as “the transferor company”) for an appropriate order of sanctioning the scheme of arrangement in the nature of amalgamation with Gujarat Ambuja Cements Limited (hereinafter referred to as “the transferee company”).

2. Company Petition No.35 of 2006 is filed by the transferee company for sanctioning the scheme of arrangement in the nature of amalgamation of transferor company with transferee company under Sections 391 to 394 of the Companies Act; 1956.

3. It has been submitted on behalf of the transferor company that the main objects and some of the other incidental objects of the transferor company ard as set out in its Memorandum & Articles of Association are to produce, manufacture, trade, process, refine, import, export, purchase, sell and generally to deal in all types and kinds of cement. The main

objects and the incidental and the ancillary objects of the transferor company are mentioned in para – 4 of the Company Petition. It is further submitted on behalf of the transferee company that the main objects of the transferee company as set out in its Memorandum & Articles of Association was to carry on the business as manufacturers and dealers in grey cement, white portland cement, ordinary portland cement and cement of all the kinds and varieties, concrete, lime stone, sagole, soap sagole, etc., and to establish, construct, acquire, run, operate on any factory for manufacturing cement and allied products. The main, incidental as well as ancillary objects of the transferee company are mentioned in para – 10 of the Company Petition. It is submitted on behalf of both the petitioners that they have proposed the scheme of arrangement between the transferee company and the transferor company and their respective members. It is submitted that as it evident from the object clause as disclosed in the Memorandum of Association, the transferor company has

powers under their object to amalgamate with any other company having objects in part similar to each other. It is submitted that the Board of Directors of both the transferor and transferee company at their respective Board meetings have unanimously passed the resolution and approved the said scheme of amalgamation. It is submitted by the transferor company that the business of both the companies on amalgamation will be carried out more economically, efficiently and beneficially as more funds and assets for the business of the amalgamated company will be available. The justification for the said scheme of amalgamation has been mentioned in para – 18 of the petition.

4. It is submitted on behalf of the transferor company that the Company Application No. 402 of 2005 was filed for seeking directions for holding of meeting of the unsecured creditors of the company and by order dated 13th December, 2005, this Court passed an order directing the company to hold the meeting of unsecured

creditors of the petitioner company on 2.2.2006. It is also further submitted on behalf of the transferor company that the calling of the meeting of the equity shareholders of the company as required to be convened as per Section 391 of the Companies Act; 1956 for the purpose of considering and if thought fit, to approve with or without modification the scheme of arrangement by way of amalgamation, has been dispensed with in view of the transferor company being wholly owned subsidiary of transferee company. It is submitted that pursuant to the order dated 13th December, 2005 meeting of the unsecured creditors of the transferor company was held on 2.2.2006 and the Chairman of the said meeting has submitted its report and it is submitted that the unsecured creditors, who attended the meeting held unanimously in favour of the scheme.

5. That admission of the present Company Petitions were advertised in two daily newspapers namely, “Times of India” (English) and “Sandesh”

(Gujarati) – Both Ahmedabad Edition and affidavit with regard to the admission and notifying the date of final hearing have been published in the aforesaid two newspapers is also filed. This Court has not received any objections to the present Company Petitions except by Sardarsarovar Narmada Nigam Limited, which will be dealt with hereinafter. Notices of Company Petitions were also sent to the Regional Director, Western Region, Department of Company Affairs, and an affidavit has been filed by the Deputy Registrar of the Companies in the Office of the Registrar of the Companies dated 13.6.2006 along with the communication by the Regional Director and submitted that the report on the aforesaid Company Petitions have been examined by the Director and it has been decided not to oppose the said petitions. The Official Liquidator attached to this Court has also submitted its report on the basis of the report submitted by the Chartered Accountant and it is reported that the acts and transactions of the company were conducted within the objects

mentioned in the Memorandum of Association in the company and that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to the public interest. Thus, it appears that the Central Government as well as the Official Liquidator have no objection, if the proposed scheme of amalgamation is sanctioned by this Court.

6. It is submitted on behalf of the transferee company that the transferee company had filed a Company Application No.403 of 2005 for seeking directions for holding the meetings of the equity shareholders and unsecured creditors of the company and by order dated 13th December, 2005, the learned Single Judge of this Court passed necessary order directing the company to hold the meeting of the equity shareholders and the unsecured creditors and accordingly, the meeting was held on 2.2.2006 and the Chairman to the said meeting has submitted its report dated 10.2.2006 and it is submitted that the equity shareholder, who attended the meeting had

unanimously held in favour of the company as well as the unsecured creditors also held unanimously in favour of the scheme. The result of the said meeting has been placed on record.

7. It is submitted that after the admission of both the Company Petition, the admission and hearing was advertised in two local news papers viz. “Indian Express” (English Daily) and “Sandesh” (Gujarati Daily) – Both Ahmedabad Edition, notifying the date of final hearing, and except Sardarsarovar Narmada Nigam Limited, no objection has been received by this Court opposing the present Company Petitions. It is submitted that the Regional Director has also submitted that they have no objection, if the proposed scheme of amalgamation is sanctioned by this Court.

8. Heard Shri K.H.Kaji, learned advocate appearing for the objector i.e. Sardarsarovar Narmada Nigam Limited. The only objection on the part of the objector is that there are various suits

filed and pending against the transferee company and therefore, the proposed scheme of amalgamation of transferor company with transferee company should not be sanctioned and it will be very difficult for the objector to get the amount, if ultimately they succeeded in the suits. On the other hand, Shri Tanvish Bhatt, learned advocate appearing for the petitioners has submitted that the suits are pending against the transferee company and the transferee company will remain the same. It is submitted that on the contrary, the transferor company, who is also profit making company will bring funds into the transferee company and thus, the financial position of the transferee company would be strengthen and therefore, it is requested to allow both the Company Petitions by overruling the objections of the objector.

9. On going through the objections raised by the objector – Sardarsarovar Narmada Nigam Limited and after having heard the learned advocates appearing for the respective parties, it appears

that the only objection raised by the objector is that there are few suits filed by the objector against the transferee company and if the proposed scheme of amalgamation is sanctioned, it will affect the objector in recovering the amount, if ultimately the decree is passed in their favour. It is required to be noted that the transferor company is a profit making company. After the amalgamation, the existence of the transferee company would remain the same. It seems that the transferor company will bring the funds to the transferee company and therefore, the financial position of the transferee company will be more strengthen. It is not appreciable how by the said amalgamation of transferor company with transferee company, the objector is likely to be affected. If in future, the decree is passed in favour of the objector, the same can be recovered from the transferee company as the transferee company will remain the same. Under the circumstances, there is no substance in the objections raised by the objector.

10.The scheme has detailed the benefits, which it may bring to both the companies under the same management on account of amalgamation of both the companies including the minimization of the administration, marketing and operative costs, which would increase the profitability of the company, which would also result into economize of scale and integrated operations resulting in efficient production and marketing. Thus, it is submitted that the amalgamation would be to the mutual advantage of both, the transferor and transferee companies. All the shareholders as well as creditors of both the companies have approved the scheme of amalgamation and there is no objection from any of the shareholders or any of the creditors to the scheme of amalgamation. Despite advertisement of public notice of these petitions in two daily newspapers having wide circulation in the State, except Sardar Sarovar Narmada Nigam Limited, nobody has objected to the amalgamation of transferor company with the transferee company. So far as objections on

behalf of the Sardar Sarovar Narmada Nigam Limited are concerned, they have been dealt with hereinabove. There is no reason for disapproving the scheme of amalgamation on account of those objections. The scheme of amalgamation does not appear to be contrary to law or contrary to public interest. As stated above, the Central Government have submitted their no objection as well as the Official Liquidator attached to this Court has also submitted its report and no any objection has been raised by the Official Liquidator. Hence, there does not appear to be any impediment to granting sanction to the scheme of amalgamation as proposed.

11. For the reasons stated above, both the Company Petitions i.e. Company Petition Nos.34 of 2006 and 35 of 2006 are allowed. Prayers in terms of paragraphs – 36 (a) to (d) of Company Petition No.34 of 2006 and in terms of paragraphs – 35 (a) to (d) of Company Petition No.35 of 2006 are hereby granted.

12.So far as costs to be paid to the learned Central Government Additional Standing Counsel is concerned, the same is quantified at Rs.3500/- per petition and the same may be paid by the respective petitioners – companies to Shri P.J.Malkan, learned Central Government Additional Standing Counsel.

[M.R.Shah, J.]

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